



New Jersey Department of Children and Families Policy Manual

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Purpose:

This issuance establishes policy and procedure related to how the Department of Children and Families (DCF) ensures that provider agencies with third party social service and training contracts conduct business ethically and honestly, and how the Office of Contract Administration (OCA) determines and documents they are in good standing with both the federal and State governments.

Authority:

- Executive Order #34/1976
(<https://nj.gov/infobank/circular/eojsc34.htm>)
- Executive Order #189/1988
(<https://www.state.nj.us/infobank/circular/eok189.htm>)
- The State of New Jersey Department of Treasury Circular Letter No. 93-13-GSA (<https://www.state.nj.us/infobank/circular/cir9313a.htm>)
- N.J.A.C. 10:3-1, Debarment, Suspension and Disqualification
- [Standard Language Document](#) for Social Services and Training Contracts

Policy:

- A. The OCA shall offer technical assistance or issue a notice of corrective action to a provider agency that can reasonably be expected to remediate performance deficiencies. Such remediation may prevent the debarment, suspension, and disqualification processes described herein and prescribed by Executive Orders #34 and #189, and the initiation of the contract default,
https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml.

- B.** Provider agencies involved in the processes for debarment, suspension, and disqualification are excluded from holding or bidding for contracts with DCF. These measures are to promote full performance, free, and honest competition, and not intended for punishment. They shall not be invoked for any longer than deemed necessary to protect the interests of the State.
- C.** A decision to debar and disqualify a provider agency from contracting with DCF shall be made only upon the approval of the (DCF) Commissioner. Insofar as practicable, prior notice shall be given to the Attorney General and the Treasurer of any proposed debarment.
- D.** A decision to suspend and disqualify a provider agency from contracting with the Department shall be made only upon the approval of the Commissioner and the Attorney General. Insofar as practicable, prior notice shall be given to the Treasurer of any proposed suspension.
- E.** The existence of cause for debarment or suspension is not necessarily required unless required by law. The decision to debar shall always be made within the discretion of the Commissioner. The decision to suspend shall always be made within the discretion of the Commissioner and the NJ Attorney General. All mitigating factors shall be considered.

Procedures:

- A.** Prior to initial contract execution or contract renewal, the OCA Business Office shall confirm a provider agency is in good standing with the State of New Jersey and the federal government as follows:
 - 1. The OCA shall conduct a State search of each provider agency at the initiation of a contract and then annually by using the New Jersey Debarment Database at <http://www.nj.gov/treasury/revenue/debarment/index.shtml>.
 - 2. The OCA shall conduct a federal search of each provider agency at the time it initiates a contract with DCF and annually update the search results, by using the System for Award Management (SAM) at <https://www.sam.gov/SAM/>. In SAM, there are four (4) exclusion categories for debarment. The four (4) categories are:
 - a) Ineligible (Proceedings Pending)
 - b) Ineligible (Proceedings Completed)
 - c) Prohibition/Restriction
 - d) Voluntary Exclusion
 - 3. The OCA shall obtain a signed Department of Children and Families' Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions form, [CON-I-A-8-8.03](#)

[Attachment 1](#) from all provider agencies with third party social service or training contracts funded with federal grant monies.

B) Any Department employee that becomes aware of a possible cause to invoke the processes for debarment and disqualification to bid or otherwise engage in State contracting with a provider agency and its affiliates shall immediately report the information to their manager. The manager shall then report the information to the Commissioner and the assigned OCA Business Office.

1. Causes for debarment include but are not limited to:

a) A final judgment or conviction establishing that a provider agency had executed one or more of the following:

- 1) The commission of a criminal offense to obtain or attempt to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
- 2) A violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;
- 3) A violation of the federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276 B,c);
- 4) A violation of any of the laws governing the conduct of elections of the State or its political subdivisions;
- 5) Violations of the Law Against Discrimination (P.L. 1945, c.169, C.10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (C.10:2-1 et seq.), or of the Act Prohibiting Discrimination by Industries Engaged in Defense Work in the Employment of Persons Therein (C.114, L.1942, C.10:1-10 et seq.);
- 6) Violations of any laws governing the hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor; or
- 7) Violations of any laws governing the conduct of occupations or professions or regulated industries.

Or

b) Clear and convincing evidence establishing that a provider agency has done one or more of the following:

1. Willfully failed to perform in accordance with contract specifications or within contractual time limits;
2. Maintained a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts,

- provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the debarred provider agency;
3. Violated contractual or statutory provisions regulating contingent fees;
 4. Provided any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Department to warrant debarment;
 5. Paid, offered to pay, or agreed to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
 6. Solicited any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards;
 7. Directly or indirectly undertook any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sells any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which they are employed or associated or in which they have an interest within the meaning of N.J.S.A. 52:13D-13g. Any such relationships shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer, employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;
 8. Influenced, or attempted to influence or caused to be influenced, any State officer or employee or special State officer or employee in their

- official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
9. Caused or influenced, or attempted to cause or influence, any State officer or employee or special State officer or employee to use, or attempts to use, their official position to secure unwarranted privileges or advantages for the vendor or any other person; or
 10. Any other cause affecting responsibility as a State contractor of such serious and compelling nature to warrant debarment, including such conduct as may be prescribed by laws or contracts even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.
- C) Upon the Business Office's knowledge of infractions by a provider agency or its affiliates, the Business Office Manager shall ensure the Commissioner has been alerted to the situation and seek approval to invoke the processes for debarment and disqualification to bid or otherwise engage in State contracting of a provider agency and its affiliates.
1. The Commissioner, after considering all mitigating factors in determining the seriousness of the offense and the failure or inadequacy of performance and exercising discretion in determining whether debarment is warranted, may act in the public interest to authorize OCA to seek debarment for cause. When the Commissioner decides to seek debarment, OCA shall provide notice to the NJ Attorney General and the NJ Treasurer of the proposed debarment, and then provide the provider agency written notice:
 - a) Stating that debarment is being considered;
 - b) Setting forth the reasons for the proposed debarment; and
 - c) Indicating that such party will be accorded an opportunity for a hearing if requested within a stated period in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.
 2. Debarment shall be for a definitively stated period not to exceed five (5) years.
 3. Except as otherwise provided by law, a debarment may be removed, or the period reduced by discretion of the Commissioner. In the event an appeal taken from a judgment or conviction that provided a basis for debarment is reversed, the debarment shall be removed upon the request of the debarred provider agency unless other cause for debarment exists.
- D) Any Department employee that becomes aware of a possible cause to invoke the processes for suspension and disqualification to bid or otherwise engage in State contracting of a provider agency and its affiliates shall immediately report the information to their manager. The manager shall then report it to the Commissioner and the assigned OCA Business Office. The OCA then may

invoke the processes for suspension and disqualification to bid or otherwise engage in State contracting of a provider agency and its affiliates to protect the interests of the State upon the approval of the Commissioner and the Attorney General.

1. Causes for suspension and disqualification to bid or otherwise engage in State contracting of a provider agency and its affiliates include but are not limited to:
 - a) Adequate evidence that cause exists or evidence adequate to create a reasonable suspicion that cause exists with or without corroboration which may properly be drawn from the existence or absence of affirmative facts; or
 - b) Another department in the State has suspended a provider agency of this Department.
 2. When the Commissioner and the Attorney General determine that one of the above causes justifies the decision to seek suspension, they shall authorize the OCA to provide prior notice to the Treasurer of the proposed suspension and then provide the provider agency written notice within ten (10) days after the effective date of the suspension:
 - a) Stating that a suspension has been imposed and its effective date;
 - b) Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
 - c) Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
 - d) Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the provider agency will be given either a statement of the reasons for the suspension and an opportunity to request a hearing, or a statement declining to give such reasons and setting forth the Department's position regarding the continuation of the suspension.
 3. A suspension shall not continue beyond 18 months from its effective date unless debarment, civil or criminal action regarding the alleged violation shall have been initiated within that period.
 4. The suspension shall continue until the legal proceedings are completed.
- E) The OCA will provide technical assistance or require corrective action to remediate a provider agency's deficiencies in the performance of its contract as follows:
1. Any Department employee that becomes aware of a provider agency's deficiency in the performance of its contract should immediately report the

deficiency to the OCA Business Office charged with administering the provider agency's contract.

2. A deficiency in the performance of a contract may include, but is not limited to, a provider agency's failure to:
 - a) Comply with the terms and conditions of the [Standard Language Document](#) for Social Service and Training Contracts;
 - b) Adhere to DCF policies and procedures;
 - c) Comply with contract deliverables;
 - d) Maintain qualified staff and staff ratios;
 - e) Use contract funds only for purposes approved by the OCA;
 - f) Guard against conduct or acts detrimental to the Department or Department clients;
 - g) Avoid sanctions or financial actions against the provider agency;
 - h) Submit accurate and complete documentation on a timely basis;
 - i) Demonstrate financial solvency or accountability;
 - j) Adhere to programmatic standards concerning the quality and consistency of care; and
 - k) Maintain a record free of an unusually high number of investigations, relative to the number of investigations of other provider agencies, or investigations resulting in negative findings.
3. Although the above described deficiencies in the performance of a contract also may serve as a basis for the OCA to conclude that the provider agency is in default of the contract in accordance with contract default, https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml, the OCA may first elect to provide technical assistance or implement corrective action to remedy the material failure to fulfill or comply with the contract terms and conditions.
4. Upon learning of a provider agency's deficiency in the performance of its contract, the OCA Business Office charged with the administration of the contract may first contact the provider agency to offer technical assistance to remediate it:
 - a) Technical assistance should involve the setting of measurable and attainable goals to be achieved within specified timeframes, and subsequent documented efforts to accomplish these goals;
 - b) If the identified goals are not achieved through technical assistance, additional deficiencies are identified while engaging in technical assistance, or the deficiencies identified or subsequently discovered are too numerous or serious to address through technical assistance, the Director of the OCA or the Director's designee may authorize the initiation of corrective action after

consultation with the program manager overseeing the provision of the contracted services;

- c) If this consultation results in the conclusion that deficient performance justifies discontinuing the referral of DCF clients for services by the provider agency, then the program manager overseeing the provision of the program services will notify the provider agency of this decision promptly by telephone and in a confirming letter copied to the OCA Director and the assigned Business Office Manager. The program manager may discontinue referrals to the provider agency before OCA initiates corrective action, or for some or all the time that the provider agency is under corrective action.
- d) The OCA Director or designee will authorize the Business Office staff to initiate corrective action after assessing:
 - 1. The effectiveness of the technical assistance provided and the utility of additional technical assistance;
 - 2. The alternative of concluding that the provider agency is in default of the contract in accordance with contract default, https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml;
 - 3. The impacts on the provider agency's performance of any other contracts in the Department;
 - 4. The fairness of imposing corrective action on the provider agency compared to other similarly performing provider agencies; and
 - 5. The quality and need for the specified services as revealed in the consultation with the program manager overseeing the contracted services.
- 5. The OCA Business Office charged with the administration of the contract will inform the provider agency in writing that the Department is initiating corrective action with a notice of corrective action.
- 6. The Notice of Corrective Action:
 - a) Identifies all performance deficiencies that shall be addressed;
 - b) Directs the provider agency to submit by a specified date, a proposed Corrective Action Plan (CAP) to address each deficiency, using the attached Department template [CON-I-A-8-8.03 Attachment 2](#);
 - c) Confirms the date of the telephone notification and written confirmation of the suspension of new referrals when this is an added consequence of the initiation of corrective action;

- d) Is signed by the supervising contract administrator of the OCA Business Office charged with the administration of the contract or their supervisor;
 - e) Is addressed to the chief executive officer of the provider agency;
 - f) Is copied to the OCA Director, DCF Division Director, program manager of the unit overseeing the contracted services, Office of Grants, Integrity, and Accountability Director, Office of Licensing (OOL) Director, and the Institutional Abuse Investigation Unit (IAIU) Director;
 - g) Includes the following language: "The Department will not consider applications a provider agency under corrective action submits in response to bidding opportunities that are due prior to the date of that provider agency's notice of discharge from corrective action.
 - h) Is sent by electronic mail and certified mail with return receipt requested on both; and
 - i) Shall be presumed to have been received by the addressee five (5) days after being properly mailed to the last address known by the Department.
7. Failure by a provider agency to respond timely to a notice of corrective action may result in contract default. If a proposed CAP is not provided by the specified due date, the OCA Business Office charged with the administration of the contract will issue a written statement that the CAP is overdue, and the provider is at serious risk of contract default, https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml.
 8. Upon receipt of the provider agency's written proposed CAP, the OCA Business Office charged with administering the contract will review the provider agency's proposed specified actions and timeframes to ameliorate each deficiency identified in the notice of corrective action.
 9. The OCA Business Office reviewing the provider agency's proposed CAP may condition approval on the provider agency's acceptance and incorporation of amendments and revised timeframes. The business manager's review will include consultation with the program manager of the unit overseeing the provision of contracted services.
 10. The OCA Business Office will respond in writing within 15 business days of the provider agency's submission of their proposed CAP by sending either a notice of Corrective Action Plan rejection or a Notice of Corrective Action Plan Approval.

11. The Notice of Corrective Action Plan Rejection:
 - a) Confirms the Department's rejection of the provider agency's proposed CAP, and the inability of the Department and the provider agency to agree on revisions that would result in approval; and
 - b) Informs the provider agency that the deficiencies in the performance of the contract identified in the notice of corrective action now serve as the basis for the Department's finding that the provider agency is in default of the contract in whole or in part in accordance with contract default,
https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml
12. The Notice of Corrective Action Plan Approval:
 - a) Confirms either the Department's acceptance of the provider agency's proposed CAP, or specifies that its acceptance is contingent on the provider agency's acceptance of OCA's revision(s) to the proposed CAP;
 - b) Reminds the provider agency that the Department will not consider any applications submitted to it in response to bidding opportunities that are due before the provider agency's Notice of Discharge from Corrective Action; and
 - c) Informs the provider agency that a notice of discharge from corrective action will be sent when the Department concludes that each deficiency identified in the approved CAP has been remedied and that all improvements have been maintained for a period of six (6) continuous months, unless otherwise specified.
13. From start to finish, the approved CAP is monitored by the OCA and its assigned Business Office, in consultation with the program manager overseeing the provision of the contracted services.
14. The Business Office shall monitor the biweekly progress of a provider agency in fulfilling each of the requirements of a CAP.
15. The OCA Business Office charged with the administration of the contract will advise the provider agency of the date when all requirements in the approved CAP have been met in a notice of corrective action plan compliance.
16. The Notice of Corrective Action Plan Compliance:
 - a) Confirms the Department's satisfaction with the provider agency's performance in its compliance with all provisions of the approved CAP as of a specified date;
 - b) Reminds the provider agency that it must maintain its compliance for a period of six (6) continuous months from that date, during

which the Department will not consider any applications from the provider agency submitted in response to bidding opportunities due prior to that date, unless the Commissioner exercises discretion to find cause for the OCA to issue an earlier notice of discharge from corrective action; and

- c) Informs the provider agency that failure to maintain continuous compliance during the six (6) month period will result in an extension of the monitoring period or contract default proceedings.

17. The OCA Business Office charged with administering the contract sends a notice of discharge from corrective action when the provider agency has maintained compliance for a continuous six (6) month period.

18. The Notice of Discharge from Corrective Action:

- a) Acknowledges that the provider Agency has remedied each deficiency identified in the approved CAP;
- b) Confirms that the term of the corrective action has ended because each of the improvements made through the CAP has been maintained for a period of six (6) continuous months, unless the Commissioner decides otherwise; and
- c) Advises that the Department will consider any applications from the provider agency submitted in response to bidding opportunities that are due after the date of the notice of discharge from corrective action.

19. If the provider agency fails to respond to the OCA Business Office's request to comply with any of the terms or conditions of the corrective action, in whole or in part, the Department may, by notice, place the provider agency in default status, and take any action(s) listed in accordance with contract default,

https://www.nj.gov/dcf/policy_manuals/CON-I-A-9-9.05.2007_issuance.shtml.

20. The corrective action procedure in this section does not extend to corrective actions initiated by the Department's Office of Licensing (OOL). OOL conducts investigations and corrective actions to address provider agencies who fail to adhere to its regulations, while leaving OCA to address those who fail to adhere to contract requirements. The results of its investigations, however, may form a basis for the Department's conclusion that a provider agency is sufficiently deficient in its performance to justify OCA corrective action.

21. The corrective action procedure in this section does not extend to remedial measures required by the Department's Institutional Abuse Investigations Unit (IAIU). The results of its investigations, however, may

form a basis for the Department's conclusion that a provider agency is sufficiently deficient in its performance to justify OCA corrective action.

Key Terms (Definitions):

- Affiliate(s) means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has power to control another.
- Commissioner means the DCF Commissioner
- Corrective Action means that Office of Contract Administration (OCA) has identified and notified the provider agency in writing regarding contractual or programmatic deficiencies in the administration of services that require remediation through a Corrective Action Plan (CAP).
- Corrective Action Plan (CAP) means the written response from a provider agency to the OCA's written notice of corrective action that describes the actions the provider will take within specified timelines to remedy each identified deficiency.
- Debarment means an exclusion from Department contracting, based on the provider agency's lack of responsibility as evidenced by an offense, failure, or inadequate performance, for a reasonable period commensurate with the seriousness of the infraction. The decision to debar shall be made by the Commissioner.
- Default means the provider agency has materially failed to fulfill or comply with the terms and conditions of the contract.
- Department or DCF means the New Jersey Department of Children and Families.
- Disqualification means a debarment or suspension which denies or revokes a qualification to respond to a Request for Proposal (RFP) or Request for Qualifications (RFQ) or to otherwise engage in Department contracting pursuant to statutes or regulations.
- Good Standing means that a provider agency is not debarred, suspended, or disqualified from doing business with the State of New Jersey or the federal government pursuant to Executive Order #34/1976. Good Standing also means the provider agency is not under a corrective action plan or has successfully met and then maintained all the requirements of a corrective action plan for a period of six (6) continuous months or an otherwise specified period, as confirmed by a notice of discharge from corrective action.
- Lower Tier Covered Transaction(s) means:
 - Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction; or

- Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$100,000) under a primary covered transaction; or
- Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally required audit services.
- Lower Tier Participant means the provider agency and all subcontractors, down to the lowest level, that may result from the initial contract.
- Notice of Corrective Action means the written communication from the Office of Contract Administration (OCA) to the provider agency that notifies the provider agency that the Department is initiating corrective action.
- Notice of Corrective Action Plan Approval means the written communication from the Office of Contract Administration (OCA) Business Office that confirms either the Department's acceptance of the provider agency's proposed Corrective Plan (CAP), or the provider agency's acceptance of OCA's revisions to the proposed CAP.
- Notice of Corrective Action Plan Rejection means the written communication from the Office of Contract Administration (OCA) Business Office that confirms the Department's rejection of the provider agency's proposed corrective action, the inability of the Department and the provider agency to agree on revisions that would result in approval, and the probable consequence of contract default.
- Notice of Discharge from Corrective Action means a written notice from DCF to the provider agency confirming that it has addressed the deficiencies identified in the notice of corrective action and that the improvements made through corrective action were maintained throughout the specified timeframe.
- Program Manager means the head of the Departmental Component charged with overseeing the provision of the program services provided under the contract.
- Provider Agency (also Provider) means all for profit, nonprofit, private, and public entities that have either a cost reimbursement or fee for service contract with the Department.
- State when capitalized means the State of New Jersey.
- State Contracting means any arrangement giving rise to an obligation to supply anything to, or perform any service for the State, other than by State employment. To supply anything to or perform any service for a private person where the State provides substantial financial assistance and retains the right to

approve or disapprove the nature or quality of the goods, service, or persons who may supply or perform the same.

- Suspension means the Department has excluded a provider agency from providing some or all contracted services for a temporary period, pending the completion of an investigation or legal proceeding. The decision to suspend shall always be made at the discretion of the Commissioner and the NJ Attorney General.

Forms and Attachments:

- [CON-I-A-8-8.03 Attachment 1](#) - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction
- [CON-I-A-8-8.03 Attachment 2](#) - Corrective Action Plan Template to be Completed by Provider Agency

Policy History:

- Revised June 22, 2020
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